

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER  
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

MDL No. 2843

Case No: 18-MD-2843 VC (JSC) (N.D. Cal)

Hon. Vince Chhabria

Courtroom 4 – 17th Floor

Special Master: Daniel Garrie, Esq.

**ORDER REGARDING THE USE OF TAR**

JAMS Ref. No: 1200058674

## **BACKGROUND**

1. On August 18, 2021, Special Master Daniel Garrie (“Special Master Garrie”) and Judge Gail Andler declared impasse on the issue of whether Facebook should be compelled to use Technology Assisted Review (“TAR”) in their review and production.

2. Pursuant to the Protocol for Resolving Discovery Disputes, Plaintiffs submitted their opening brief regarding the use of TAR on August 30, 2021. Plaintiffs argue that requiring Facebook to implement TAR is within the Special Master’s discretion and Facebook should be compelled to use TAR because (a) TAR will increase the pace of discovery, which Plaintiffs assert is currently insufficient to meet the needs of the case; and (b) implementing a TAR protocol will increase cooperation and transparency in discovery, which Plaintiffs assert have been insufficient thus far as “Facebook has continued to assert an unduly narrow view of relevance”. See Plaintiffs’ Brief Regarding the Use of TAR.

3. Pursuant to the Protocol for Resolving Discovery Disputes, Facebook submitted their Opposition to Motion to Compel TAR on September 9, 2021. Facebook argues that (a) the ESI Protocol forecloses Plaintiffs’ request that the Special Master compel TAR; (b) the case Law unanimously rejects Plaintiffs’ request for an order compelling TAR; (c) Plaintiffs offer no justification for an order compelling Facebook to use TAR; and (d) compelling Facebook to use TAR at this stage would delay discovery. See Facebook’s Opposition to Motion to Compel TAR.

## **ORDER**

4. Special Master Garrie finds that additional information pertaining to Facebook’s review is necessary to rule on the TAR related issues. Within 6 business days, Facebook is to provide the items below to Special Master Garrie.

- i. Facebook is to make available a technical resource (witness) knowledgeable in the analytics, review tools, and methodologies used in Facebook's production to guide Special Master Garrie through an in-camera review of samples of the documents reviewed and to explain the review process.
- ii. Facebook is to provide Special Master Garrie a sample of 500 documents from the unreviewed documents claimed to have a 3% responsiveness rate. See Facebook's Opposition to Motion to Compel TAR, at 14.
- iii. Facebook is to provide a list of the repositories that are included in the scope of their review, designating as follows: (a) which repositories have been collected and which remain to be collected, if any; (b) which repositories have been searched; (c) which repositories have been reviewed; (d) which repositories are custodial sources and which are non-custodial sources.
- iv. Facebook is to provide written responses clarifying the following points from their Opposition to Motion to Compel TAR.
  1. "Facebook has now completed its first-level human review of more than two-thirds of the documents that are most likely responsive." See Opposition to Motion to Compel TAR, at 14.
    - a. What does Facebook mean by "documents that are most likely responsive"?
    - b. How did Facebook determine that these documents are most likely to be responsive?

2. “To date, Facebook has produced 1,959,618 pages over 45 productions, in addition to more than 500 pages of interrogatory responses.”

See Opposition to Motion to Compel TAR, at 10.

- a. How many documents comprise the 1,959,618 pages stated above?
- b. Do the 1,959,618 pages stated above include documents from the government productions?

5. Upon the filing by Facebook of the supplemental information requested, the matter will be taken under submission by the Special Master without further briefing or argument except as deemed necessary by the Special Master.

**IT IS SO ORDERED.**

September 22, 2021



Daniel Garrie  
Discovery Special Master

**PROOF OF SERVICE BY E-Mail**

Re: In re: Facebook, Inc. Consumer Privacy User Profile Litigation (Special Master)  
Reference No. 1200058674

I, Anne Lieu, not a party to the within action, hereby declare that on September 22, 2021, I served the attached ORDER REGARDING THE USE OF TAR on the parties in the within action by electronic mail at El Monte, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at El Monte,  
CALIFORNIA on September 22, 2021.

/s/ Anne Lieu

Anne Lieu

JAMS

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